

Exhibit A

Part 1 of 5

COPY OF TRANSCRIPT

VOLUME I
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AGERE SYSTEMS, INC., CYTEC
INDUSTRIES, INC., FORD MOTOR
COMPANY, SPS TECHNOLOGIES LLC
and TI GROUP AUTOMOTIVE SYSTEMS
LLC

Plaintiffs

V

CIVIL ACTION
NO. 02-CV-3830 (LDD)

ADVANCED ENVIRONMENTAL
TECHNOLOGY CORPORATION, ET AL.
Defendants

Oral deposition of JAY
VANDEVEN, taken at the law offices of
Ballard Spahr, Andrews & Ingersoll,
LLP, 1735 Market Street, 42nd Floor,
Philadelphia, Pennsylvania, on
Tuesday, February 13, 2007, at
9:59 a.m. before Jennifer Bermudez, a
Registered Professional Reporter, and
Notary Public, pursuant to notice.



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1 JAY VANDEVEN, having been
2 duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. FLAX:

6 Q. Good morning,
7 Mr. Vandeven. My name is Melissa
8 Flax, and I represent the defendant
9 Handy & Harman Tube Company in this
10 matter and you are here for your
11 deposition today.

12 I understand you have been
13 having some health problems, so if
14 you need to take a break at any time,
15 please let us know, just not while a
16 question is pending.

17 Are you taking any
18 medication today that would in any
19 way inhibit your ability to
20 understand my questions and to
21 respond truthfully?

22 A. No, I'm not.

23 Q. Have you previously been
24 deposed?



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1 A. In this matter or ever?

2 Q. Have you ever been deposed
3 in any matter whatsoever?

4 A. Yes.

5 (Vandeven Exhibit 1 was
6 marked for identification.)

7 BY MS. FLAX:

8 Q. Mr. Vandeven, you have been
9 handed Vandeven 1. Can you tell me
10 what that is?

11 A. This is my June 30th, 2006
12 expert report in this matter.

13 Q. If you would turn to Page
14 A4 of Vandeven 1.

15 A. Page?

16 Q. A4.

17 A. I'm not sure what you mean
18 by A. Oh, I'm sorry. Okay.

19 Q. You have a section entitled
20 Expert Testimony of Jay Vandeven. Is
21 that correct?

22 A. Yes.

23 Q. You did not indicate
24 whether you gave deposition testimony



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1 and/or trial testimony in any of the
2 matters that are listed under that
3 section. Can you tell me whether or
4 not you were deposed in any or all
5 and whether you gave any trial
6 testimony?

7 A. Sure. I will just run down
8 them from top to bottom?

9 Q. Sure.

10 A. In the Sun Oil matter, the
11 first entry, I gave deposition
12 testimony.

13 Q. And for whom?

14 A. On behalf of Sun Oil. The
15 second entry I represented Beazer
16 East and I gave both deposition and
17 trial testimony in that matter.

18 The next entry, the third
19 entry I represented 1325 G Street
20 Associates and provided deposition
21 testimony. For Fruehauf Production
22 Company, the fourth entry, that was
23 deposition testimony.

24 For Southern Natural Gas



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1 Company I represented Southern
2 Natural Gas and I gave both
3 deposition and trial testimony in
4 that matter. For Merck v. Amsted I
5 gave deposition testimony and
6 testified in an arbitration.

7 And for GE versus AIG, I
8 represented GE and gave deposition
9 testimony and testified in an
10 arbitration.

11 Q. Is the question mark in the
12 parenthetical a typo next to your
13 entry for GE Capital?

14 A. Yes. I didn't even see
15 that. Yes.

16 Q. So you are familiar with
17 how a deposition works. Correct?

18 A. Yes.

19 Q. I'm just going to go over a
20 few background questions just to make
21 sure that you are fresh with these
22 instructions.

23 A. Okay.

24 Q. You have been sworn in and



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1 you are obligated to give truthful
2 answers as though you were testifying
3 in court. The court reporter sitting
4 to my left and your right can only
5 take down one individual at a time.

6 So while you may anticipate
7 what my question is, I would ask that
8 you wait until I complete my
9 question, and I will hopefully wait
10 until you complete your answer before
11 asking the next question.

12 Please vocalize all your
13 answers. The court reporter can't
14 take down nods, shrugs, uh-huh,
15 huh-uh. It just doesn't read well in
16 the transcript.

17 Your attorney may pose
18 certain objections. In the absence
19 of a direction not to answer, you are
20 to answer the question.

21 If you don't understand a
22 question, tell me and I will rephrase
23 it. If you answer my question, I
24 will presume that you understood the



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1 question as asked.

2 There are several other
3 attorneys sitting around this table.
4 Some may or may not ask you questions
5 when I conclude my questioning.

6 And as I said before, you
7 control the deposition, so if you
8 feel that you need a break to stretch
9 or use the restroom, for whatever the
10 reason may be, please indicate and we
11 will take a break to accommodate you.

12 In connection with your
13 deposition testimony, what did you do
14 to prepare?

15 A. I went back over my expert
16 report that you have provided in
17 Exhibit 1, also a rebuttal report
18 that I prepared.

19 I read back over some of
20 the underlying documents. I believe
21 I reviewed very briefly some of the
22 other expert reports in this matter.

23 I reviewed very briefly
24 some of the other deposition



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1 transcripts of the other experts in
2 the matter that were provided after I
3 gave my or submitted my expert
4 report. And I met briefly with
5 counsel.

6 Q. Mr. Harris?

7 A. Yes.

8 Q. You said you reviewed some
9 of the deposition transcripts of the
10 experts in this case. Can you tell
11 me which expert or experts you
12 reviewed?

13 A. I briefly reviewed the
14 transcript, I believe, of Mr. Brown
15 and Mr. Pease. I think I also
16 reviewed the transcripts of the
17 experts representing Ashland in this
18 matter.

19 MR. COOLEY: I'm sorry,
20 representing who?

21 THE WITNESS: Ashland.

22 BY MS. FLAX:

23 Q. Did you review both days of
24 Dr. Brown's deposition?



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1 A. I believe so.

2 Q. About how long did you meet
3 with Mr. Harris?

4 A. For about maybe two and a
5 half hours.

6 Q. How many times in your
7 professional career have you worked
8 with Ballard, Spahr?

9 A. This is the first time I
10 have worked with Ballard, Spahr.

11 Q. How many times in your
12 professional career have you worked
13 with Glenn Harris?

14 A. This is the first time.

15 Q. Have you ever worked with
16 Cytec Industries or any of its
17 affiliates before this litigation?

18 A. I don't believe so, no.

19 Q. Have you ever worked with
20 SPS Technologies or any of its
21 affiliates prior to this litigation?

22 A. Yes.

23 Q. And in what capacity did
24 you work with SPS Technologies?



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1 A. I worked for them on two
2 matters, I believe. One was over ten
3 years ago. I don't remember the
4 exact nature of that matter.

5 It was a cost allocation
6 matter, I believe, on a number of
7 properties that they owned, and they
8 were -- the issue had to do with some
9 allocation-related issue with a
10 component of SPS Arnold Engineering.

11 I don't remember the exact
12 nature of the matter.

13 And then I also worked with
14 SPS on an allocation matter at their
15 Ogallala facility.

16 Q. I'm sorry?

17 A. Ogallala. Ogallala,
18 Nebraska. It's two Ls.
19 O-G-A-L-L-A-L-A, I believe. And I
20 worked with SPS on an allocation-
21 related groundwater issue at that
22 site.

23 Q. When you say you worked
24 with SPS on these two previous



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1 matters, were you acting as a
2 consultant or were you acting as an
3 expert?

4 A. On the second matter I was
5 acting as an expert. I represented
6 them in a mediation.

7 Q. Was it a mediation that
8 took place while a lawsuit was
9 pending, or was it a mediation that
10 preceded the institution of any
11 lawsuit?

12 A. I don't recall.

13 Q. In connection with the
14 first matter that you mentioned, were
15 you serving as an expert or as a
16 consultant for SPS?

17 A. I believe I was working as
18 a consultant in that matter.

19 Q. And do you know if that was
20 a litigated matter?

21 A. I don't remember, no.

22 Q. Have you ever worked with
23 Agere Systems or any of its
24 affiliates before this litigation?



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1 A. No.

2 Q. Have you ever worked with
3 Western Electric or any of its
4 affiliates before this litigation?

5 (Discussion off the
6 record.)

7 BY MS. FLAX:

8 Q. I believe the last question
9 that I asked you is have you ever
10 worked with Western Electric or any
11 of its affiliates prior to this
12 litigation?

13 A. No, I have not.

14 Q. Have you ever worked with
15 Lucent or any of its affiliates prior
16 to this litigation?

17 A. No.

18 Q. Have you ever worked with
19 Ford Motor Company or any of its
20 affiliates prior to this litigation?

21 A. No, I have not.

22 (Vandeven Exhibit 2 was
23 marked for identification.)

24 BY MS. FLAX:



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1 Q. Mr. Vandeven, you have been
2 handed a document that's been marked
3 Vandeven-2, which was produced to me
4 by plaintiff's counsel as part of
5 your work file. Do you recognize
6 this document?

7 A. I don't -- I can't say that
8 I recognize this specific e-mail. I
9 recognize the format of this
10 document.

11 Q. Well, can you review the
12 contents of this e-mail?

13 A. Sure. I'm going to get my
14 glasses.

15 Q. Sure.
16 Have you had an opportunity
17 to review that e-mail?

18 A. Yes.

19 Q. First let me ask you, who
20 is Mark Hawley?

21 A. Mark Hawley is a
22 hydrogeologist in my office that
23 works with me.

24 Q. I will come back to



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1 Mr. Hawley momentarily. In this
2 e-mail, the last line -- well, the
3 last portion of this e-mail says
4 "Second, can you give me a brief
5 summary of what was wrong with the
6 probabilistic analysis they did in
7 2000."

8 What is a probabilistic
9 analysis?

10 A. In this case or in general?

11 Q. Well, this e-mail is from
12 you to Mr. Hawley, so what your
13 understanding of the phrase
14 probabilistic analysis was as you
15 wrote those words in this e-mail?

16 A. I don't recall what I was
17 referring to with respect to this
18 case and a probabilistic analysis.

19 Q. Why don't you tell me what
20 your general understanding is
21 initially of the phrase probabilistic
22 analysis?

23 A. A probabilistic analysis is
24 an analysis of the occurrence of an



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1 activity associating a set of
2 probabilities with the likelihood of
3 that occurrence happening.

4 So it's the opposite of a
5 deterministic analysis. It's not a
6 single number, it's a range or a set
7 of numbers that have a different
8 probability associated with them.

9 (Vandeven Exhibit 3 was
10 marked for identification.)

11 BY MS. FLAX:

12 Q. Mr. Vandeven, if you would
13 take a moment to read what's been
14 marked as Vandeven-3, and let me know
15 when you have completed that.

16 A. Okay.

17 Q. This is an e-mail from Mark
18 Hawley replying to your e-mail which
19 we have marked as Vandeven-2.
20 Correct?

21 A. Yes.

22 Q. And in Mr. Hawley's
23 response to your e-mail, which we
24 have marked as Vandeven-2, he says,



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1 "I will leave a brief explanation of
2 my concerns about the prob analysis
3 for you as a voice message.

4 "We can talk about it more
5 tomorrow or call me back tonight if
6 you want to."

7 Do you see that?

8 A. Yes.

9 Q. Does this refresh your
10 recollection as to what the
11 probabilistic analysis was that you
12 wrote in your e-mail which has been
13 marked Vandeven-2?

14 A. No, it doesn't.

15 Q. Do you recall a voice mail
16 message from Mr. Hawley relating to
17 his concerns about the probabilistic
18 analysis?

19 A. No, I don't.

20 Q. Do you recall any
21 conversations with Mr. Hawley either
22 telephonically or in person where you
23 discussed problems or concerns with
24 the probabilistic analysis?



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1 A. No, I don't.

2 (Vandeven Exhibit 4 was
3 marked for identification.)

4 BY MS. FLAX:

5 Q. Mr. Vandeven, you have been
6 handed a document that we have marked
7 as Vandeven-4, and I just have a few
8 questions relating to this document.

9 If you would turn to Page 2
10 of the attachment. First of all, if
11 you will go to the first page of the
12 attachment, on the lower left-hand
13 corner there is a date that says
14 12/28/06. What is that date?

15 A. I couldn't say for sure.

16 Q. Well, do you have any
17 information as to what this date
18 means?

19 A. No, I don't.

20 Q. Turning back to Page 2 of
21 Vandeven-4, in paragraph number two
22 there appears to be a little more
23 than three lines that are blacked
24 out. Do you see that?



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1 A. Yes.

2 Q. What is that? What is
3 being blacked out?

4 A. I don't know.

5 Q. Why is that blacked out?

6 A. I don't know.

7 Q. Did you compile your work
8 file for plaintiff's counsel in
9 connection with responding to the
10 deposition notice?

11 A. Yes.

12 Q. Do you recall intentionally
13 blacking out certain portions of
14 drafts that were contained in your
15 file?

16 A. No.

17 Q. Is it your practice that
18 drafts would have blacked-out
19 portions?

20 A. No.

21 Q. Do you have any explanation
22 as to why these three plus lines are
23 blacked out?

24 A. No, I don't.



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1 Q. All right. If you would
2 turn to Page 5 of Vandeven-2, and if
3 I asked you the same questions that I
4 just asked you, would your responses
5 be the same?

6 MR. COOLEY: Excuse me,
7 Vandeven-4?

8 MS. FLAX: Vandeven-4.
9 Sorry.

10 MR. COOLEY: What is the
11 date of Vandeven-4?

12 MS. FLAX: The e-mail is
13 dated June 26, 2006.

14 MR. FACKENTHAL: Will you
15 describe what it is?

16 MS. FLAX: I'm sorry.
17 Vandeven-4 is an e-mail dated June
18 26, 2006 from Mark Hawley to Jay
19 Vandeven attaching a draft of
20 Mr. Vandeven's report in this matter.

21 MR. COOLEY: And I'm sorry,
22 the date on the cover sheet of that
23 draft is?

24 MR. FACKENTHAL: Did she



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1 say June 26th?

2 MS. FLAX: The draft says
3 June 24th, 2006.

4 MR. COOLEY: Thank you.

5 BY MS. FLAX:

6 Q. Going back to the
7 questions, I asked you to turn to
8 Page 5 of Vandeven-4, and if I asked
9 you the same questions that I asked
10 you about Page 2, would your response
11 be the same, that you don't know what
12 is being blacked out?

13 A. That's correct, yes.

14 Q. And if I asked you to turn
15 to Page 9 and again asked you the
16 same questions, would your response
17 be the same?

18 A. Yes.

19 Q. And lastly, on Vandeven-4,
20 if you turn to Page 10, and I ask you
21 the same questions regarding the
22 blacked-out portions of this draft
23 report, would your response be the
24 same?



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1 A. Yes.

2 Q. Who would know what was
3 contained in these blacked-out
4 portions of your report?

5 A. I don't know.

6 Q. Well, Mr. Vandeven, they
7 don't just appear out of nowhere.
8 Someone had to intentionally make
9 these blackouts.

10 So who in your office do
11 you believe would have information or
12 knowledge as to either A, why this
13 was done, or B, what was contained?

14 A. I doubt that anybody in
15 my -- this is not something that we
16 ever do, black out portions of text
17 like this, so I don't know who would
18 have information about this. I don't
19 know who -- what portions were
20 blacked out, why, or who did it.

21 Q. When you were reviewing and
22 compiling your work file for
23 Mr. Harris, did you see on any of
24 your drafts blacked-out portions?



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DEPOSITION OF JAY VANDEVEN, VOLUME I, 2/13/07

1 A. No.

2 MR. HARRIS: Can we go off
3 the record for a second?

4 MS. FLAX: Sure.

5 (Discussion off the
6 record.)

7 BY MS. FLAX:

8 Q. In connection with your
9 preparation of Vandeven-1, did you
10 have any telephone conversations with
11 either Mr. Harris, any other attorney
12 at Ballard, Spahr and/or any
13 representative of the plaintiffs?

14 A. Yes.

15 Q. And do you recall how many
16 telephone conversations you had in
17 connection with your preparation of
18 Vandeven-1?

19 A. With Glenn Harris or with
20 anybody in that group that you --

21 Q. Well, let's start with
22 Mr. Harris.

23 A. I would say with Mr. Harris
24 I probably had on the order of maybe



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1 four or five conversations.

2 Q. And what was the content of
3 those conversations?

4 A. Generally related to what
5 the objectives were and what
6 schedule, and then some conversations
7 about the opinions that I was
8 reaching.

9 Q. What were the objectives?

10 A. Well, the objectives that I
11 was given was to develop two basic
12 opinions on this matter.

13 Q. And those are the two basic
14 opinions that are contained in
15 Vandeven-1?

16 A. Correct.

17 Q. What were your
18 conversations about regarding your
19 opinions themselves?

20 A. I'm sorry, can you repeat
21 that?

22 Q. You indicated that in your
23 four or five conversations with
24 Mr. Harris you discussed your



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1 objectives, your schedule, or the
2 schedule, I should say, and you had
3 some conversations regarding your
4 opinions.

5 So my question is, what was
6 the substance of those conversations
7 regarding your opinions?

8 A. It had to do with after we
9 reviewed -- after I reviewed the
10 documents what opinions I was
11 reaching, the basis of those
12 opinions, how I saw my report being
13 developed.

14 Q. During the course of these
15 four or five telephone conversations,
16 did you take any notes of what was
17 being said?

18 A. No.

19 Q. During the course of these
20 four or five telephone conversations,
21 did any of them relate to comments on
22 your June 30th report that's been
23 marked as Vandeven-1?

24 A. I don't remember if they



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1 were comments specifically on this
2 report, no.

3 Q. You don't recall whether or
4 not Mr. Harris or any other attorney
5 at Ballard, Spahr offered comments to
6 what was ultimately your final report
7 dated June 30th, 2006. Is that
8 correct?

9 A. I recall them offering --
10 Mr. Harris offering. I didn't talk
11 to any other attorney at Ballard,
12 Spahr. I recall Mr. Harris offering
13 some minor comments on a draft
14 report, but nothing more than that.

15 Q. And when you say minor
16 comments, tell me what you mean by
17 minor comments.

18 A. Editorial format-related
19 comments.

20 Q. Now, when I originally
21 started asking you this line of
22 questioning I asked you whether you
23 had spoken to Mr. Harris, any other
24 attorney at Ballard, Spahr or any



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1 representative or representatives of
2 plaintiffs and you asked me which
3 ones do I want first.

4 So now I'm going to ask you
5 about any conversations you had with
6 any of the plaintiffs'
7 representatives in connection with
8 your June 30th, 2006 report.

9 A. Okay. Is there a question
10 there?

11 Q. Did you speak with any
12 representative from any one or more
13 of the plaintiffs in connection with
14 the preparation of your June 30th,
15 2006 report?

16 A. On, I can remember, two
17 telephone conversations that I had
18 with Mr. Harris where at least one
19 other individual was on the phone.

20 Q. Do you know who that
21 individual was?

22 A. The person that I remember
23 is Tom Mesevage.

24 Q. Do you recall whether other



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1 than Tom Mesevage, any other
2 plaintiffs' representative
3 participated in these discussions?

4 A. Dennis. And I don't recall
5 Dennis's last name, but it would be
6 Dennis at SPS.

7 Q. Would it be Dennis Shea?

8 A. Dennis Shea.

9 Q. Did either Mr. Mesevage or
10 Mr. Shea offer comments to what was
11 ultimately your June 30, 2006 report?

12 A. I don't believe that they
13 did, no.

14 Q. Do you recall the contents
15 of any conversations that you had
16 with them on those one or two
17 conversations?

18 A. I don't recall. All I
19 recall is that they were on the
20 phone.

21 Q. If you would turn to
22 Vandeven-1, please. You indicated
23 that your assignment was limited to
24 what you call two basic opinions that



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1 are contained on Page 1 of your
2 report. Is that correct?

3 A. That's correct, yes.

4 Q. And those opinions are
5 found in the Paragraphs 1 and 2 that
6 are in nonitalics format. Is that
7 correct?

8 A. The opinions are in the
9 italics on Page 1.

10 Q. Okay. The nonitalics
11 Paragraphs 1 and 2 are the
12 objectives?

13 A. Yes. Those were the
14 general topics I was asked to look
15 at.

16 Q. If you would turn to Page
17 12 of Vandeven-1. In the second
18 bullet on Vandeven-1, the last
19 sentence you offer your opinion
20 regarding the PRP group's cost.

21 And you further state, "The
22 anticipated costs associated with
23 ongoing performance of the RD/RA
24 under the terms of the consent



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1 decrees are reasonable given the
2 requirements of the ROD and the
3 characteristics of the site."

4 Do you see that?

5 A. Yes.

6 Q. Did I read that accurately?

7 A. Yes.

8 Q. What's the basis for your
9 offering an opinion as to future
10 costs?

11 A. Well, the opinion that I'm
12 offering there is whether or not
13 those future costs and the activities
14 associated with those are reasonable
15 given the requirements of the ROD.

16 Q. Well, do you know what the
17 future costs are?

18 A. Not specifically, no. But
19 the activities that will be -- will
20 necessitate the incurrence of those
21 costs are reasonable and will be done
22 consistent with the ROD.

23 Q. But if activities are
24 reasonable, does that necessarily



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1 follow that the costs associated with
2 those activities are reasonable?

3 A. I wouldn't say necessarily,
4 no.

5 Q. So isn't that portion of
6 your opinion really speculative
7 because you don't know what the
8 costs -- what the future costs
9 actually are?

10 A. But this is -- you asked
11 your question in kind of a general
12 hypothetical.

13 This is the situation where
14 the costs or the activities are going
15 to be incurred at a site where EPA is
16 determining what needs to be done,
17 what activities need to be done.

18 And therefore those
19 response costs will be incurred for
20 activities that are necessary and
21 required at the site.

22 Q. I wasn't asking you in a
23 hypothetical. I was asking you
24 because you offer an opinion as to



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1 future costs.

2 I understand that EPA is
3 going to be involved. I understand
4 that there were certain activities
5 that must be undertaken at the site
6 in order to fulfill the requirements
7 of the ROD.

8 But that does not mean that
9 the costs associated with those
10 activities are necessarily
11 reasonable. Is that correct?

12 A. I would say that ultimately
13 you would have to look at the
14 individual costs, but in a case
15 like -- in a situation like this
16 where the activities are required by
17 EPA, that the activities are
18 necessary and therefore the costs
19 incurred for those will be
20 reasonable.

21 Q. How do you know that those
22 costs will be reasonable?

23 A. Because it's going to be
24 conducted in accordance with and



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1 under the direction of EPA.

2 Q. How does the fact that the
3 EPA is overseeing the cleanup that is
4 being performed by some of the
5 plaintiffs under consent decrees
6 necessarily mean that the costs that
7 may be incurred in the future in
8 connection with future necessary
9 activities will be reasonable?

10 A. That's just the way that
11 I -- that's the way that I look at
12 it. If the activity is required by
13 the EPA, and it's done in accordance
14 with EPA regulations, then the costs
15 that are incurred for that activity
16 are reasonable response costs.

17 Q. But EPA doesn't pay these
18 costs. Correct?

19 A. In this situation, no.

20 Q. I'm in this situation.

21 A. PRPs are doing this work.

22 Q. So EPA is not paying for
23 the costs, the PRPs have their own
24 consultant, engineer who are



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1 overseeing the project for the PRPs
2 and they hire somebody who charges
3 exorbitant prices. The EPA is not
4 going to see those bills. Correct?

5 A. I can't say that
6 categorically, no, that the EPA -- I
7 mean, if you have an EPA order, if
8 you are doing work like this in
9 conjunction with the EPA, the EPA has
10 access to your consultant, they have
11 to approve your consultant very
12 often, so it's not done in a vacuum.

13 The EPA certainly has
14 knowledge of the consultant that you
15 are hiring, the consultant and
16 contractors that are doing the work
17 and how they are doing the work.

18 Q. But that doesn't translate
19 into the EPA having control over what
20 a particular contractor hired by the
21 PRPs charges the PRPs for actually
22 performing the activities that are
23 required under the ROD?

24 A. What they charge them as an



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1 hourly rate?

2 Q. Their bills, their monthly
3 bills for performing the activities
4 that are required under the ROD.

5 A. No. I would say that EPA
6 doesn't have control over what their
7 monthly bills are, no.

8 Q. Okay. So with that said,
9 the PRPs are performing what is
10 required under the ROD and they have
11 a consultant who was approved by the
12 EPA but is not being paid by the EPA
13 is being paid by the PRPs and they
14 are performing necessary activities
15 in order to comply with the
16 objectives of the ROD, does it
17 necessarily follow that the costs are
18 reasonable?

19 A. I would say in that
20 situation, yes, the costs are
21 reasonable.

22 Q. And what's the basis for
23 your saying that?

24 A. The basis for me saying



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1 that would be, again, that the EPA is
2 involved in both the work that is
3 required and overseeing the work that
4 is done, in having a stake in seeing
5 that the work is done correctly.

6 And knowing that if the
7 activity is specified and required by
8 the EPA that the contractors and
9 consultants carrying out that work
10 will incur costs that are reasonable
11 response costs.

12 Q. If you would turn to Page 7
13 of Vandeven-1. You indicate that you
14 received a Bachelor of Science degree
15 in civil engineering from Clemson
16 University in 1982. What was your
17 major course of study for your
18 undergraduate degree?

19 A. Up until my senior year it
20 was kind of traditional civil
21 engineering, which was a broad
22 discipline that included both
23 hydrology, hydrogeology, and then
24 structures and building disciplines.



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1 In my senior year I focused
2 on the environmental engineering
3 aspects of civil engineering.

4 Q. Can you expound further for
5 me what your studies entailed in your
6 senior year that focused on
7 environmental engineering?

8 A. They included courses
9 related to water and wastewater
10 treatment, how chemicals -- the
11 sources of chemicals in the
12 environment, how they behave in the
13 environment, water chemistry.

14 Q. And you further state on
15 Page 7 that you received a master of
16 science degree in civil engineering
17 from Clemson University as well in
18 1985.

19 At any time between the
20 completion of your undergraduate
21 degree and your master's of science,
22 did you work as an engineering
23 professional?

24 A. Yes, I did.



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1 Q. And where did you work?

2 A. At the Savannah River Plant
3 in South Carolina.

4 Q. And what did you do at the
5 Savannah River Plant in South
6 Carolina?

7 A. I worked on determining the
8 fate and behavior of tritium from
9 their low-level waste burial sites.

10 Q. You said of tritium?

11 A. Tritium.

12 Q. Can you spell that?

13 A. T-R-I-T-I-U-M.

14 Q. What is tritium?

15 A. It's heavy water. It's a
16 water molecule with three hydrogens
17 in it. It's used in nuclear weapons.

18 Q. What research did you do
19 for your master's degree?

20 A. My master's degree focused
21 on the fate and behavior of cesium-
22 137 and cobalt-60 from a nuclear
23 power plant near Clemson University.

24 Q. Could you just give me a



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1 little more explanation as to what
2 your research was?

3 A. Well, when you break
4 uranium apart you have fission
5 products. The two predominant ones
6 are cesium-137 and cobalt-60. Any
7 nuclear power plant releases those.

8 They release -- the
9 wastewater from this particular power
10 plant went into a large freshwater
11 lake, and I looked at how those
12 chemicals -- how those radioactive
13 chemicals behaved in the lake system.

14 Q. Are you a professional
15 engineer?

16 A. I do not have a
17 professional engineering license, no.

18 Q. Staying on Page 7 of
19 Vandeven-1, you state that you worked
20 for the consulting firm of CH2M HILL
21 from 1987 to 1993 as a senior
22 environmental engineer.

23 My question is, you
24 received your master's in 1985 and in



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1 1987 you are suggesting that you were
2 a senior environmental engineer.

3 And I'm curious how you go
4 in a year and a half from being a
5 student to being a senior
6 environmental engineer. So my
7 question to you is how do you do
8 that?

9 A. My first employment after
10 my master's degree was with Environ
11 Corporation from 1985 to late 1986,
12 at which time I went to CH2M HILL.

13 My title when I first went
14 to CH2M HILL was probably more a
15 staff engineer. When I left CH2M
16 HILL I was a senior engineer project
17 manager.

18 Q. And when did you leave CH2M
19 HILL?

20 A. I believe in June 1994.

21 Q. How long were you a staff
22 engineer for CH2M HILL?

23 A. Oh, I would say probably my
24 first two or three years there.



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1 Q. And what were your job
2 duties and responsibilities as a
3 staff engineer?

4 A. I worked on a number of
5 projects primarily relating to the
6 investigation and remediation of
7 contaminated sites.

8 Q. Any particular type of
9 contaminated sites?

10 A. I worked both on large
11 Superfund sites, and then also
12 contaminated properties for private
13 plants, primarily the duPont
14 Corporation.

15 Q. And what was your next
16 title after you were staff engineer
17 for two or three years at CH2M HILL?

18 A. It was likely a project
19 manager and then progressing to
20 project manager and senior engineer.

21 Q. For approximately how long
22 were you a project manager?

23 A. I would say approximately
24 two years.



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1 Q. And what were your job
2 duties and responsibilities as
3 project manager?

4 A. They didn't really change
5 much. Still working on the same
6 kinds of sites but just taking more
7 responsibility associated with client
8 coordination and administrative
9 aspects of the projects.

10 Q. And then your last title
11 while you were employed by CH2M HILL
12 was senior project manager. Is that
13 correct?

14 A. I don't recall exactly what
15 it was, but I was a senior project
16 manager and environmental engineer.

17 Q. What were your job duties
18 and responsibilities as senior
19 project manager, environmental
20 engineer?

21 A. The same, just generally
22 associated with larger cases, larger
23 sites.

24 Q. You testified that you do



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1 not -- that you are not a
2 professional engineer. Correct?

3 A. Correct.

4 Q. Do you know what the
5 requirements for certification of a
6 professional engineer in Virginia,
7 since that's where you are from?

8 A. I believe you have to have
9 an undergraduate degree in a
10 engineering discipline. And I
11 believe to sit for your exam you have
12 to have five years of relevant
13 experience.

14 Q. What do you mean five years
15 of relevant experience?

16 A. Five years working as an
17 engineer.

18 Q. And would that be working
19 as an engineer in a particular
20 discipline?

21 A. Not a particular
22 discipline. Any of the traditional
23 engineering disciplines, I believe.

24 Q. While you were employed at



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1 CH2M HILL, did you work at the
2 Boarhead Farms Superfund site?

3 A. When I was with CH2M HILL I
4 was involved in our -- what we refer
5 to as our ARCS contract with EPA
6 Region 3, and I was involved in that
7 contract and Boarhead Farms was one
8 of the sites that CH2M HILL was
9 working on under that contract.

10 So I did work very briefly
11 on the Boarhead Farms site.

12 Q. Okay. You need to educate
13 me. What's an ARCS contract?

14 A. I believe ARCS stood for
15 Alternative Remedial Contracting.

16 Q. And CH2M HILL had a
17 contractual relationship with Region
18 3 of the EPA?

19 A. That's correct.

20 Q. And under the umbrella of
21 that contract the Boarhead Farms
22 Superfund site was one of several
23 Superfund sites that CH2M HILL was
24 providing services to the EPA?



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1 A. That's correct.

2 Q. Do you recall when you
3 became involved under this contract
4 with the Boarhead Farms Superfund
5 site?

6 A. It was at the very early
7 stages, 19 -- maybe '88 or '89.

8 Q. And do you recall how long
9 you continued to work at the Boarhead
10 site?

11 MR. HARRIS: Objection. He
12 didn't say he worked at the Boarhead
13 site.

14 MS. FLAX: I will withdraw
15 the question and I will re-ask the
16 question.

17 BY MS. FLAX:

18 Q. Did you personally have any
19 involvement with the activities that
20 CH2M HILL was performing at the
21 Boarhead Farms Superfund site?

22 A. The only activity that I
23 recall being involved in personally
24 was contracting -- subcontracting an



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1 individual to do a cultural resource
2 survey, which is a requirement under
3 the NCP.

4 Q. Do you recall who that
5 individual was?

6 A. No, I don't.

7 Q. Can you explain what the
8 survey was?

9 A. I only remember it very,
10 very -- it's very sketchy. That's --
11 conducting a cultural resource survey
12 is a requirement under the national
13 contingency plan.

14 There was indication even
15 early on that there were some
16 structures at the site that may have
17 some cultural significance.

18 So EPA is required -- I
19 think it's actually under -- it may
20 not be under the NCP, it may be under
21 NPO, that they have to do a cultural
22 resource assessment of those
23 structures to determine how they need
24 to be protected and so forth.



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1 I think it had to do with
2 the farm house there.

3 Q. Explain to me what is meant
4 by a cultural resource survey. Is it
5 like -- whether something is
6 historical, to be preserved?

7 A. Correct. I think early on
8 there was some indication that the
9 building itself could have been built
10 by William Penn, so there was some --
11 if EPA was going to go in --

12 MR. HARRIS: You thought
13 you had heard everything in this
14 case, right?

15 THE WITNESS: So this was
16 my only involvement in Boarhead
17 Farms, so I remember it like this,
18 that it was just this pristine farm
19 that had one or more buildings that
20 could have dated back to pre
21 Revolutionary War times.

22 So if EPA is going to go in
23 and start investigating, doing any
24 kind of intrusive activity, they



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1 needed to understand, not unlike you
2 have to do in Native American lands,
3 understand what the cultural
4 significance is of those structures.

5 And if they do have
6 cultural significance, then protect
7 them as you go about investigating.

8 BY MS. FLAX:

9 Q. Did you ever, either while
10 you were at CH2M HILL or while you
11 were at Environ visit the Boarhead
12 Farms Superfund site?

13 A. I did once when I was with
14 CH2M HILL, yes.

15 Q. Have you been back there?

16 A. No.

17 Q. Other than subcontracting
18 with an individual to conduct a
19 cultural resource survey, did you
20 have any other involvement with the
21 Boarhead Farms Superfund site under
22 the ARCS contract with EPA Region 3?

23 A. Nothing that I can
24 remember, no.



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1 Q. How long was your
2 involvement with the cultural
3 resource survey?

4 A. It was very brief, on the
5 order of a month, I would say.

6 Q. So you were not a project
7 manager or a site manager for the
8 Boarhead Farms Superfund site?

9 A. I don't know if I was ever
10 referred to as a site manager of the
11 Boarhead Farms site. How they may
12 have designated people to EPA, I'm
13 not sure, but I don't believe so.

14 I believe the site manager
15 for the Boarhead Farms site was a
16 woman in the Philadelphia office of
17 CH2M HILL.

18 Q. Do you recall whether you
19 had any involvement while at CH2M
20 HILL after 1990 with the Boarhead
21 Farms Superfund site?

22 A. I don't remember the time
23 frame. It was right around then,
24 maybe say '88, '89, '90. I can't



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1 remember the exact time frame.

2 Q. Do you recall whether you
3 contributed to the preparation of the
4 draft RI/FS work plan?

5 A. I don't believe I did, no.

6 Q. Did you contribute to the
7 final RI/FS work plan?

8 A. No.

9 Q. Do you know whether CH2M
10 HILL participated in the two removal
11 actions for buried drums in
12 contaminated soil that was performed
13 by EPA?

14 A. I don't know if they did or
15 not. That was certainly after my
16 involvement.

17 Q. Did you have any
18 participation in the preparation of
19 the federal on-scene coordinators
20 report?

21 A. No.

22 Q. Do you even know what
23 report I'm talking about?

24 A. I know generically what



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1 that kind of report is, but I don't
2 know specifically for this site what
3 report you are referring to.

4 Q. Would you turn to Page 13
5 of Vandeven-1.

6 Do you hold your Opinion 2
7 to a reasonable degree of scientific
8 certainty?

9 A. Yes.

10 Q. Do you hold the basis for
11 Opinion 2 to a reasonable degree of
12 scientific certainty?

13 A. Yes.

14 Q. On a scale from 1 to 100,
15 from 1 percent to 100 percent, what
16 percentage of certainty would you
17 ascribe to constitute a reasonable
18 degree of scientific certainty?

19 MR. HARRIS: Objection.
20 You are assuming that he does it that
21 way.

22 THE WITNESS: Yes. I have
23 never really thought about it -- I
24 have never really thought about it



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1 that way.

2 BY MS. FLAX:

3 Q. Well, if I asked you to
4 tell me what you believe is a
5 reasonable degree of scientific
6 certainty, how do you answer that
7 question?

8 A. Well, I would very likely
9 answer it a lot more qualitative than
10 giving you a precise percentage.

11 I would say that a
12 reasonable degree of scientific
13 certainty is based on and refers to a
14 conclusion that I reach based on the
15 totality of an evaluation. It's
16 not -- it doesn't have any specific
17 percentage associated with it.

18 Q. Well, you would agree that
19 50 percent is not a reasonable degree
20 of scientific certainty. Correct?

21 A. 50 percent of what?

22 Q. If you were only 50 percent
23 certain of your opinion, you would
24 not say that that's within a



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1 reasonable degree of scientific
2 certainty. Correct?

3 A. If I was doing an analysis
4 and reaching an opinion that allowed
5 me to associate a specific percentage
6 with it and that percentage was 50
7 percent, I would say that that was
8 not a reasonable degree of scientific
9 certainty.

10 Q. Do you have any level of
11 comfort in giving me what percentage
12 you believe an opinion would qualify
13 as one that was within a reasonable
14 degree of scientific certainty?

15 A. A percentage? No.

16 Q. On Page 13 of Vandeven-1 in
17 the first bullet point you say, "The
18 PA report indicates that bulk
19 releases of ferric chloride, copper
20 ammonium carbonate, ammonia and
21 sulfuric acid were documented."

22 Do you see that?

23 A. Yes.

24 Q. Did the Handy & Harman



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1 facility generate ferric chloride as
2 a waste?

3 A. I don't know.

4 Q. Did the Handy & Harman
5 facility generate copper ammonium
6 carbonate as a waste?

7 A. I don't know what you
8 referring to. This facility that you
9 are referring to I don't have any
10 information on.

11 Q. In connection with your
12 retention in this matter, did you
13 review any information regarding the
14 defendants?

15 A. To the extent that I
16 reviewed the other expert reports in
17 this matter, which contained
18 information about specific waste
19 streams.

20 MR. HARRIS: Time for a
21 break?

22 MS. FLAX: Sure.

23 (Recess taken)

24 (Vandeven Exhibit 5 was



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1 marked for identification.)

2 BY MS. FLAX:

3 Q. Mr. Vandeven, you have been
4 handed Vandeven-5. Can you please
5 tell me what Vandeven-5 is?

6 A. This is my November 15th,
7 2006 Rebuttal Expert Report.

8 Q. Okay. And if you would
9 turn to Page 1 of Vandeven-5.

10 The first paragraph
11 following the bullets says, and I
12 quote, "I have also reviewed the
13 expert report prepared on behalf of
14 the plaintiffs by Jurgen H. Exner of
15 JHE Technology Systems, Inc.

16 I have also reviewed the
17 documents Dr. Exner relied upon which
18 are listed in his report. I accept
19 and agree with Dr. Exner's
20 descriptions of the wastes associated
21 with various industries and
22 defendants."

23 Do you see that?

24 A. Yes.



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1 Q. Did I read that accurately?

2 A. Yes.

3 Q. What exactly did you review
4 of the documents that Dr. Exner
5 relied upon that allowed you to
6 accept and agree with Dr. Exner's
7 descriptions of the wastes associated
8 with various industries and
9 defendants?

10 A. I believe there I was
11 looking primarily at his description
12 of some of the acid wastes that were
13 disposed of at the site to determine
14 if there was information -- if he had
15 more specific information in his
16 expert report in the documents that
17 he based his opinion on regarding the
18 type of acids they may have been, how
19 strong those acids were.

20 That was the primary reason
21 I went back and looked at his report
22 and the documents that he relied on.

23 Q. So is it fair to say that
24 you did not review any documents that



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1 Dr. Exner relied upon with respect to
2 Handy & Harman Tube Company?

3 A. I'm not sure -- I frankly
4 don't -- I'm not sure who Handy &
5 Harman is. I really never concerned
6 myself with particular companies in
7 this matter, so --

8 Q. So if I asked you about any
9 of the wastes generated at Handy &
10 Harman, you would have no knowledge
11 one way or the other. Correct?

12 A. I would have no specific
13 knowledge, no.

14 Q. Well, what general
15 knowledge would you have?

16 A. I don't have any knowledge
17 sitting here today about what --
18 there may be information in the
19 documents that I have been provided
20 in this matter, but I don't have any
21 information specific or general about
22 their wastes, sitting here right now.

23 Q. Turning back to Vandeven-1,
24 if you would turn to Page 15 of your



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1 report. I would ask you to take a
2 moment and read the four bulleted
3 points that are on Page 15 of
4 Vandeven-1.

5 A. Okay.

6 Q. Nowhere in those four
7 bullet points do you mention Handy &
8 Harman Tube Company or the Handy &
9 Harman facility. Correct?

10 A. You mean --

11 Q. Handy & Harman Tube Company
12 or the Handy & Harman facility.
13 Correct?

14 A. That's correct.

15 Q. And nowhere in those four
16 bullet points do you attribute any of
17 the wastes ascribed to Handy & Harman
18 Tube Company. Is that correct?

19 A. I don't know if any of
20 these wastes are related to Handy &
21 Harman Tube Company.

22 Q. Nowhere on Page 15 does
23 your report state that waste from
24 Handy & Harman Tube Company or the



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1 Handy & Harman facility was disposed
2 of at the Boarhead site. Is that
3 correct?

4 A. That's correct.

5 Q. And it's fair to say that
6 nowhere in your report do you state
7 that waste from Handy & Harman Tube
8 Company or the Handy & Harman
9 facility disposed of wastes at the
10 site. Is that correct?

11 A. That's correct.

12 Q. In the first bullet point
13 on Page 15 the first line says, "The
14 wastes disposed of at the site may
15 have included pickle liquors."

16 Do you see that?

17 A. Yes.

18 Q. Does the phrase "may have"
19 equate with a reasonable degree of
20 scientific certainty?

21 A. I would say that that
22 refers to the fact that the
23 information that I relied on for that
24 had similar language in the ROD or in



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1 other underlying documents relating
2 to whether or not pickle liquors were
3 disposed of at the site.

4 Q. Okay. But regardless of
5 how something may have been phrased
6 in a document, do you believe that
7 use of the words "may have" rise to
8 the level of a reasonable degree of
9 scientific certainty?

10 A. Well, I'm not sure I would
11 associate the two concepts. This is
12 not an opinion, all right. I'm not
13 saying that it's my opinion that
14 wastes disposed of at the site may
15 have included pickle liquors.

16 The underlying information
17 about the site indicates that pickle
18 liquors may have been disposed of at
19 the site.

20 My opinion, then, is if
21 there were, would those constituents
22 of the pickle liquors have
23 contributed to the need for and cost
24 of remediation.



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1 Q. So if I understand your
2 response correctly -- because in
3 several places on Page 15 you used
4 the words may have and other similar
5 types of phrases.

6 Your opinion is based upon
7 the assumption that assuming these
8 wastes were disposed of at the site,
9 do you then offer an opinion as to
10 the activities that are being
11 undertaken under the ROD. Is that
12 fair?

13 A. Well, I would say that -- I
14 would agree with your first point,
15 assuming that these wastes were
16 disposed of at the site would the
17 constituents of these wastes or the
18 form that these wastes were disposed
19 of contribute to the need for and
20 cost of the response at the site.

21 Q. What other assumptions were
22 made in connection with you reaching
23 your opinions?

24 MR. HARRIS: Objection.



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1 Objection to the form of the
2 question. Vague. Ambiguous.

3 THE WITNESS: I don't
4 recall any other assumptions that I
5 had to make to reach my opinions.

6 BY MS. FLAX:

7 Q. Mr. Vandeven, you are not
8 offering an expert opinion with
9 respect to allocation. Is that
10 correct?

11 A. That's correct.

12 Q. And you are not offering an
13 opinion as to the causes and timing
14 of environmental property damage. Is
15 that correct?

16 A. Well, I would -- well, I'm
17 not sure I would say that. I would
18 say that my opinion would generally
19 come under the category of causes of
20 property damage at the Boarhead Farms
21 site.

22 The causes of property
23 damage at the Boarhead Farms site are
24 in totality all of the wastes that



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1 may have been disposed of there.

2 Q. And when you say all of the
3 wastes, you include under that
4 umbrella not only the defendants'
5 waste but the plaintiffs' waste.
6 Correct?

7 A. I really didn't distinguish
8 between plaintiffs, defendants or
9 individual companies.

10 I looked at the kinds of
11 wastes that may have been disposed of
12 and then reached an opinion about
13 whether or not the constituents of
14 those wastes or the form of those
15 wastes contributed to the need and
16 cost of remediation.

17 Q. So regardless of who the
18 generator was, any wastes that went
19 to the Boarhead Farms site in your
20 opinion contributed to the response
21 actions?

22 A. That's correct.

23 Q. And so based upon that, you
24 are offering an opinion as to a cause



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1 of environmental property damage but
2 you are not offering an opinion as to
3 the timing of environmental property
4 damage. Correct?

5 A. No. My opinion doesn't
6 really have a temporal aspect to it,
7 no.

8 Q. And you are not offering an
9 opinion as to the fate and transport
10 of the contamination at the Boarhead
11 Farms Superfund site. Correct?

12 A. Well, I believe my opinion
13 includes aspects that are fate and
14 transport opinions, yes.

15 Q. Tell me what your opinions
16 are that include aspects of fate and
17 transport.

18 A. Looking at the specific
19 constituents of a waste that may have
20 been disposed of there, how that
21 would have behaved at the Boarhead
22 Farms site and why it would have
23 contributed to the need for costs of
24 remediation and looking at the form



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1 of the waste, be it in bulk or in
2 drums, and how that would have
3 impacted the behavior and movement of
4 chemicals in the environment and the
5 necessity for cleanup costs at the
6 site.

7 I'm looking at how
8 different constituents or different
9 wastes impacted other wastes or
10 impacted other materials at the site,
11 for instance drums. All those things
12 are kind of fate and transport
13 opinions, I would say.

14 Q. Can you show me in
15 Vandeven-1 where you have a
16 discussion about any or all of those
17 topics that you just articulated?

18 A. Sure. A complete or just
19 in examples?

20 Q. I would like you to be as
21 complete as possible.

22 A. Okay.

23 Opinion 2 starts on Page
24 13. The second bullet includes a



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1 fate and transport -- an opinion
2 based on fate and transport.

3 Q. Are you saying that the
4 whole bullet is related to fate and
5 transport or just portions of that?

6 A. At least portions of it
7 are.

8 There's subjects such as
9 how materials could affect the
10 permeability in groundwater
11 elevations and how those can
12 influence fate and transport of
13 chemicals, how acidic solutions can
14 affect the fate and transport of
15 inorganic contaminants, how corrosive
16 solutions promote the degradation of
17 buried drums and the release of
18 material.

19 So all of those are fate-
20 and-transport-related opinions.

21 Q. Okay.

22 A. Let's see, on Page 14, the
23 last bullet, maybe halfway through
24 the last bullet the sentence that



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1 starts, "In addition, wastes that do
2 not exhibit the RCRA characteristic
3 of corrosivity (i.e. that exhibit a
4 pH between 2 and 12 and a half) can
5 still promote the disintegration of
6 metal drums.

7 Even near-neutral acidic
8 wastes consume some of the buffering
9 capacity of the soils; this
10 facilitates the migration of many
11 chemicals, for example metals, that
12 are more soluble in acid or basic
13 conditions."

14 That's a fate-and-
15 transport-related opinion.

16 Now we are into the bullets
17 that we talked about before on Page
18 15.

19 The first bullet refers to
20 pickle liquors that may have been
21 disposed of at the site and how the
22 acidity of pickle liquors can affect
23 the mobility of metals in soil and
24 groundwater. That's a fate and



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1 transport opinion.

2 The second bullet on 15
3 refers to circuit board etchant. And
4 if that was released at the Boarhead
5 Farms site, the acidity associated
6 with that material can affect the
7 levels and fate of metals in the soil
8 and groundwater.

9 A similar topic in the
10 third bullet relating to various
11 plating wastes, nickel and chromium
12 plating wastes that may have been
13 disposed of at the site and how the
14 acidity of those materials could have
15 increased the solubility of metals.

16 At the bottom of Page 16,
17 the start of the last paragraph on 16
18 over to 17 is a fate-and-transport-
19 related basis for my opinion, as is
20 the last paragraph on 17.

21 Q. If we can go back to Page
22 14 of Vandeven-1, the runover
23 paragraph at the top of the page, the
24 last sentence of the runover



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1 paragraph that says, "Such solutions
2 may also immobilize metals that were
3 naturally present in the soils at the
4 site."

5 Do you see that?

6 A. Yes.

7 Q. Did I read that accurately?

8 A. Yes.

9 Q. Can you tell me what the
10 basis is for that statement?

11 A. I would have to just
12 quickly go back and look at the whole
13 bullet there. Okay.

14 There again we are talking
15 about corrosive or acidic solutions
16 and not only for the same reasons
17 they could mobilize metals that are
18 contained in wastes at the site, they
19 could also mobilize metals that are
20 naturally contained in the soils at
21 the site.

22 An acidic solution will,
23 for instance, dissolve the outer
24 coating of soil particles where many



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1 metals reside, and that will mobilize
2 those metals and will dissolve those
3 metals in groundwater.

4 Q. And the basis for that
5 statement can be found in what
6 document?

7 MR. HARRIS: Objection. It
8 assumes it can be found in a
9 document.

10 THE WITNESS: It can be
11 found in any basic soil chemistry or
12 environmental chemistry document.

13 BY MS. FLAX:

14 Q. So you don't need expertise
15 in order to make this statement. Is
16 that correct?

17 A. I think you need expertise
18 in soil chemistry and environmental
19 chemistry, yes.

20 Q. Do you have expertise in
21 soil chemistry and environmental
22 chemistry?

23 A. Yes.

24 Q. How have you acquired the



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1 expertise in soil chemistry and
2 environmental chemistry?

3 A. Both through my academic
4 training and my professional
5 experience over the last 20 years.

6 Q. In the next bullet, the
7 second part of the first sentence
8 says, "because of the history of
9 waste disposal (documented releases)
10 at the site."

11 What do you mean by that
12 portion of your statement?

13 A. You read a portion of one
14 sentence there. I just want to
15 make --

16 Q. Yes. I'm sorry. It's the
17 first sentence and in the middle of
18 the sentence it starts with the word
19 "because."

20 A. Okay. Okay. I'm sorry,
21 can you ask your question again? I
22 just wanted to read that bullet.

23 Q. What is meant by that
24 portion of the sentence that says



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1 "because of the history of waste
2 disposal (documented releases) at the
3 site"? What are you intending to
4 mean by that?

5 A. I believe I'm referring
6 there to some of the early 1970s
7 documented bulk releases at the
8 Boarhead Farms site, and I believe I
9 mentioned at least some of those in
10 the opening to my expert report.

11 Q. Can you show me where in
12 your expert report that you reference
13 the 1970s documented releases.

14 A. On page 13. I think we
15 referred to this before where the
16 preliminary assessment report
17 indicates bulk releases of ferric
18 chloride, copper ammonium carbonate,
19 ammonia and sulfuric acid.

20 Q. That's a reference to 1970s
21 documented releases?

22 A. I believe that that's what
23 the PA is referring to, yes.

24 Q. And what's the PA?



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1 A. It's the Preliminary
2 Assessment.

3 Q. And did you review the
4 Preliminary Assessment in connection
5 with the preparation of your report?

6 A. I believe so, yes.

7 Q. Back on Page 14 of
8 Vandeven-1, the first sentence, you
9 refer to documents. Can you identify
10 what documents you are referring to?

11 A. The first sentence where?

12 Q. In the second bullet on
13 Page 14.

14 A. I believe that's referring
15 to documents related to the removal
16 action.

17 Q. Can you identify on your
18 Attachment B what documents you would
19 be referring to?

20 A. Specifically, I cannot say
21 for sure specifically, no.

22 Q. Well, reviewing Attachment
23 B, are there any documents that you
24 have reason to believe are the



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1 documents that you are referring to
2 in the second bullet on Page 14?

3 A. I would say documents such
4 as EPA 1993, the On-scene
5 Coordinators Report.

6 Q. And you are on what page of
7 your --

8 A. B1. It's possible that the
9 1995 Engineering Evaluation Cost
10 Analysis Report has information about
11 that also.

12 Q. Does that complete your
13 answer?

14 A. Yes.

15 Q. Mr. Vandeven, have you ever
16 worked in a steel manufacturing plant
17 or facility?

18 A. No, I have not.

19 Q. As a consultant, have you
20 ever worked for a steel manufacturing
21 plant or facility?

22 A. I don't believe so, no.

23 Q. Have you written and/or
24 published any scientific papers



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1 regarding the operation and/or
2 processes at a steel manufacturing
3 facility or plant?

4 A. No.

5 Q. Have you authored and/or
6 published any articles relating to
7 wastes generated from the operations
8 and/or processes at a steel
9 manufacturing facility or plant?

10 A. No.

11 Q. And is it fair to say that
12 you are not analyzing or evaluating
13 the operations and/or wastes
14 generated from a steel manufacturing
15 facility or plant in this litigation?

16 A. That's a fair statement,
17 yes.

18 Q. And is it fair that you
19 don't have any firsthand knowledge of
20 any steel manufacturing operations or
21 facilities?

22 A. Any steel manufacturing
23 operations or facilities? I have
24 some -- I have -- in my 20 years of



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1 experience I have some experience of
2 steel manufacturing facilities, but
3 no direct experience working for a
4 steel manufacturing facility.

5 Q. What is your experience
6 over your 20 years in connection with
7 a steel manufacturing facility?

8 A. I would say that the
9 primary one would be a case that I've
10 worked on where there was a steel
11 manufacturing facility -- it was a
12 dispute between a steel manufacturing
13 facility or a facility that included
14 steel manufacturing and my client.

15 So we were looking at the
16 wastes associated with both
17 facilities.

18 Q. Was this a litigated
19 matter?

20 A. It's not a litigated matter
21 currently, no.

22 Q. Was this a recent matter?

23 A. Yes.

24 Q. Have you been engaged as a



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1 consultant in this matter that you
2 have just described?

3 A. Yes.

4 Q. When were you engaged as a
5 consultant?

6 A. I would say maybe two years
7 ago.

8 Q. Can you tell me -- you said
9 you were looking at the wastes of
10 both facilities. What is actually
11 your charge with this project?

12 A. It has -- my charge with
13 this project is determining the
14 contribution to a piece of land that
15 both companies owned at one time, so
16 looking at the waste that was
17 generated and potentially disposed of
18 on this piece of land by each entity.

19 Q. And what's your
20 understanding of the wastes that are
21 being looked at with the steel
22 manufacturing -- or the facility that
23 also contains some steel
24 manufacturing?



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1 A. The wastes include
2 almost -- it's just -- it's a very
3 long list of wastes from petroleum
4 products to acid wastes to organic
5 wastes. It was a large integrated
6 facility that included steel
7 manufacturing.

8 Q. And are wastes from that
9 portion of the operations that
10 involve steel manufacturing included
11 in your review and consideration of
12 the contribution to the contamination
13 at this one piece of land?

14 A. Yes.

15 Q. And do you know what those
16 particular wastes are?

17 A. They include both
18 petroleum -- as I said, petroleum
19 wastes, acidic wastes and volatile
20 organic wastes.

21 Q. And that's limited to that
22 portion of the operations that was
23 related to steel manufacturing?

24 A. No. It's not limited to



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1 that. It's limited -- the entire
2 facility.

3 Q. Do you know what wastes are
4 limited to the steel manufacturing
5 aspect of this facility or do you
6 just know the big picture?

7 A. We are not limiting it to
8 any particular part of the facility,
9 so it's the big picture.

10 Q. And in connection with your
11 work on this particular project you
12 haven't tried to ascertain what waste
13 streams are generated from one
14 operation of the facility versus what
15 waste streams are generated in
16 another operation of the facility.

17 Is that correct?

18 A. No, that wouldn't be
19 correct. That's part of what we are
20 doing, yes.

21 Q. So in connection with the
22 work that you are doing, did you take
23 or have you looked at the wastes that
24 are generated from that portion of



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1 the operations that were engaged in
2 steel manufacturing?

3 A. I don't know if we have
4 specifically looked at that, no.

5 (Vandeven Exhibits 6 & 7
6 were marked for identification,
7 respectively.)

8 MS. FLAX: For the record,
9 I have had marked as Vandeven-6 a
10 November 15th, 2006 e-mail timed at
11 10:57 a.m. from Mark Hawley to Glenn
12 Harris.

13 And attached to it is a
14 draft expert rebuttal opinions of Jay
15 Vandeven, and the date on that is
16 November 15th, 2006, as well.

17 BY MS. FLAX:

18 Q. Do you need a break?

19 A. No, I'm fine.

20 MS. FLAX: And I'm also
21 identifying for the record what has
22 been marked as Vandeven-7, which is a
23 November 15th, 2006 e-mail timed at
24 4:40 p.m. from Mark Hawley to Glenn



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1 Harris CC'd to Jay Vandeven attaching
2 to it expert rebuttal opinions of Jay
3 Vandeven also dated November 15th.

4 BY MS. FLAX:

5 Q. Mr. Vandeven, if you would
6 turn to Page 7 of Vandeven-6 and Page
7 7 of Vandeven-7, the last
8 paragraph -- well, what I would like
9 you to do is I would like you to read
10 the last paragraph on Page 7 of
11 Vandeven-6 and the last paragraph of
12 Vandeven-7 on Page 7.

13 A. To myself or do you want me
14 to read --

15 Q. To yourself.

16 A. Okay.

17 Q. Can you tell me how it came
18 about that the last paragraph on Page
19 7 of Vandeven-6 was deleted and how
20 the last paragraph of Vandeven-7 on
21 Page 7 that runs onto Page 8 was
22 substituted?

23 A. Well, I can tell you what I
24 recall. I think the origin of the



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1 paragraph that's in Exhibit 6 was a
2 generic general opinion about the
3 site-specific nature of doing a --
4 and the complexity of doing an
5 allocation of response costs in a
6 site like this.

7 As I said, I was not asked
8 to do an allocation in this matter,
9 and my original report did not
10 include any allocation-related
11 opinions.

12 But then after reading the
13 expert reports from the other side
14 and doing this rebuttal, they seemed
15 to speak to the issue of allocation.

16 So I thought in my rebuttal
17 report I would say something general
18 at the end about the complexity of
19 that process at a site like this.
20 And then I likely determined that
21 that didn't really add anything to my
22 report.

23 And instead I tried to find
24 an example of something specific



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1 about the complexity of the site and
2 the complexity of the wastes that may
3 have been disposed of at the site and
4 the complexity of how the allocation
5 process would need to consider the
6 wastes and how it behaved in the
7 environment and the response costs
8 associated with that waste. And
9 that's why I substituted the last
10 paragraph in Vandeven-7.

11 Q. Between 10:57 a.m. on
12 November 15th and 4:40 p.m. November
13 15th, did you speak with Mr. Harris,
14 any other attorney at Ballard, Spahr
15 or any representative of one or more
16 of the plaintiffs regarding your
17 rebuttal report?

18 A. I may have. I don't recall
19 the time of individual phone calls on
20 an individual day.

21 Q. Did you speak to any other
22 attorney at Ballard, Spahr other than
23 Mr. Harris?

24 A. No, I did not.



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1 Q. Did you speak to Mr. Harris
2 regarding your rebuttal report?

3 A. Yes.

4 Q. Can you tell me what those
5 conversations were?

6 A. Similar to my original
7 expert report, what -- we discussed
8 the reports that I was rebutting, who
9 they were from, generally what they
10 contained.

11 He asked me if anything --
12 to look at these reports and
13 determine whether anything in these
14 reports would cause me to change my
15 original opinion. And that was the
16 general nature of our discussions.

17 Q. Do you recall what
18 conversation, if any, that you had
19 with Mr. Harris with respect to the
20 contents of your rebuttal report?

21 A. I recall having, I would
22 say, maybe two conversations with him
23 about my initial -- after I looked at
24 the expert reports from the other



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1 side, what my initial impressions
2 were, whether or not I thought --
3 again, whether or not I thought they
4 would cause me to change my original
5 opinion.

6 Q. And I believe you stated in
7 your rebuttal report they did not
8 lead you to change your opinions. Is
9 that correct?

10 A. That's correct.

11 Q. On Vandeven-6, the last
12 paragraph that ultimately did not
13 make it into your final rebuttal
14 report, you proffer an opinion
15 regarding equitable allocation?

16 And I just want to be
17 absolutely sure, you are not offering
18 an opinion either in your initial
19 report or your rebuttal report as to
20 allocation among the parties to this
21 litigation. Is that correct?

22 A. That's correct.

23 Q. If you would look at
24 Vandeven-5.



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1 You would agree with me
2 that Vandeven-5 does not state that
3 drums of degreaser sludge containing
4 TCE that were generated by Handy &
5 Harman Tube Company or the Handy &
6 Harman facility were disposed of at
7 the Boarhead site?

8 A. I don't believe that I
9 reached that conclusion, no.

10 Q. And do you have any
11 evidence or are you aware of any
12 evidence that drums of degreaser
13 sludge waste containing TCE that was
14 generated by Handy & Harman Tube
15 Company or the Handy & Harman
16 facility was in fact disposed of at
17 the Boarhead site?

18 A. Only to the extent that
19 Dr. Brown refers to that waste being
20 disposed of at the site.

21 Q. You say Dr. Brown refers to
22 wastes being disposed of at the
23 site. In Dr. Brown's report, which I
24 presume you read, there was a section



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1 entitled assumptions. Do you recall
2 that?

3 A. I don't recall specific
4 sections of his report, no.

5 Q. Well, if I represent to you
6 that there was a section entitled
7 assumptions and that those
8 assumptions presumed disposal at the
9 site, you don't have any independent
10 evidence that degreaser sludge waste
11 containing TCE that was generated at
12 Handy & Harman Tube Company or the
13 Handy & Harman facility was disposed
14 of at the site, other than
15 Dr. Brown's assumption. Correct?

16 A. I would say that's correct,
17 yes.

18 Q. In the last paragraph on
19 Page 7 of Vandeven-5, the very end of
20 the third line of that last paragraph
21 which starts "In response."

22 A. Okay.

23 Q. Do you know how much free
24 liquid was present in the degreaser



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1 sludge generated at the Handy &
2 Harman facility or Handy & Harman
3 Tube Company?

4 A. No.

5 Q. Do you know if in fact any
6 free liquid was present in the
7 degreaser sludge generated at the
8 Handy & Harman facility?

9 A. Specifically of that
10 facility, no.

11 Q. Are you aware of any
12 references that would indicate the
13 quantity of free liquid in the
14 degreaser sludge that was generated
15 at Handy & Harman Tube Company or the
16 Handy & Harman facility?

17 A. No.

18 Q. You describe the degreaser
19 sludge or you state that, "The
20 description of the degreaser sludge
21 provided in his --" referring to
22 Dr. Brown's -- "Paragraph 55 does not
23 establish that the amount of free
24 liquid TCE was minimal; materials



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1 described as sludges and handled with
2 shovels may contain substantial
3 quantities of liquids."

4 Now, you testified that you
5 don't know how much free liquid was
6 in the degreaser sludge. You don't
7 know if any free liquid was in fact
8 in the degreaser sludge.

9 So is it fair to say, then,
10 that your description of the
11 degreaser sludges as sludges handled
12 with shovels that may contain
13 substantial quantities of liquids is
14 speculation?

15 A. I wouldn't call it
16 speculation. It may not be -- it may
17 not be facility specific, however you
18 refer to your clients, Handy & Harman
19 Tube, it may not be facility
20 specific.

21 But from the environmental
22 insult or impact of TCE used as a
23 degreaser is well known to anybody
24 that's practiced in this industry



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1 over the last 20 years.

2 And degreasers used during
3 that time and the sludge that was
4 generated by those activities contain
5 free liquids.

6 It was not solid grit metal
7 parts that were generated that were
8 shoveled out of TCE degreasers by any
9 stretch. So it may not be facility
10 specific, but it is absolutely not
11 speculation.

12 Q. Notwithstanding that you
13 don't have any information regarding
14 the quantity or whether there was any
15 free liquid in Handy & Harman's
16 degreaser sludge waste, the basis for
17 you saying that such a statement in
18 this context is not speculative is
19 based upon what?

20 MR. HARRIS: Objection.

21 Asked and answered.

22 THE WITNESS: Yes. I just
23 went through that.

24 Any description of the



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1 history of TCE use in this country
2 and why it's one of the primary
3 contaminants in groundwater will
4 discuss how TCE was used, how it was
5 generated at facilities, how it came
6 to be disposed of in the environment.

7 Anybody that's ever looked
8 at the operations of a TCE degreaser
9 knows that the sludge that is
10 generated from a TCE degreaser is not
11 solid material, that it contains free
12 liquids, that it contains mobile
13 trichloroethylene and that the
14 materials disposed of from TCE
15 degreasers contains liquids.

16 Q. You further state in the
17 last paragraph on Page 7 of Vandeven-
18 5, "In addition, if the volume of
19 degreaser sludge was as small as
20 suggested in Paragraph 60 of
21 Dr. Brown's report, the drums that
22 contained the degreaser sludge may
23 well have contained other liquid
24 wastes."

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1 Do you see that?

2 A. Yes.

3 Q. Did I read that accurately?

4 A. Yes.

5 Q. Do you know if in fact the
6 drums or the degreaser sludge from
7 the Handy & Harman facility contained
8 other liquid waste?

9 A. No, I do not.

10 Q. And you don't know
11 quantitatively how much alleged other
12 liquid waste might have been in the
13 drums with the degreaser sludge.
14 Correct?

15 A. That's correct.

16 Q. Are you aware of any
17 evidence that would indicate the
18 quantity of the alleged other liquid
19 wastes that might have been in the
20 drums with the degreaser sludge?

21 A. No, I'm not.

22 Q. What is the basis for your
23 statement that the drums containing
24 the degreaser sludge may well have



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1 contained other liquid wastes?

2 A. Simply the fact that if
3 they were going to dispose of a full
4 drum, if they were going to dispose
5 of a drum and it only contained a
6 certain amount of TCE degreaser
7 sludge that they may have included
8 other wastes in that drum.

9 Q. But you have no evidence of
10 that. Correct?

11 A. That's correct.

12 Q. So isn't that statement
13 speculative?

14 A. I say that it -- I use the
15 word may.

16 Q. So you would agree with me
17 that it's speculative?

18 A. What I'm referring to is if
19 it did contain other liquids, that
20 the TCE would have partitioned into
21 those other liquids.

22 Q. So that statement that you
23 are making about the other liquids,
24 that's not being made with a



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1 reasonable degree of scientific
2 certainty, correct?

3 A. The opinion is made to a
4 reasonable degree of scientific
5 certainty. The opinion is that if
6 there were other liquids in a drum
7 that contained a small amount of TCE
8 degreaser sludge, then the TCE would
9 dissolve into that other liquid.

10 Q. With respect to the free
11 liquid or the alleged other liquid,
12 are you aware of any method that
13 could be used to quantify the content
14 of either of those two?

15 A. I'm not sure -- I don't
16 understand the question.

17 Q. Well, are you aware in your
18 experience of a means or a method to
19 quantify what part of a 55-gallon
20 drum would contain the degreaser
21 sludge waste and what would contain
22 the other liquid waste?

23 A. Only if you had records
24 showing what that breakdown was.



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1 Q. Staying on Page 7 of
2 Vandeven-5, you further state, "The
3 degree to which the TCE was
4 partitioned in the sludge would
5 likely depend on the other
6 constituents of the waste in the
7 drum. If water was present, it
8 probably contained dissolved TCE."

9 Do you see that?

10 A. Yes.

11 Q. Did I read that accurately?

12 A. Yes.

13 Q. Do you know if the drums
14 with the degreaser sludge contained
15 any water?

16 A. No, I don't.

17 Q. Do you know quantitatively
18 how much water could have been
19 contained in the drums?

20 A. No, I don't.

21 Q. Are you aware of any
22 evidence that demonstrates that water
23 was in the 55-gallon drums with the
24 degreaser sludge waste?



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1 A. No, I'm not.

2 Q. And, again, your opinion is
3 premised upon the assumption of if
4 water was present. Correct?

5 A. The opinion about TCE
6 dissolving into water from a drum
7 that contained both TCE degreaser
8 sludge and water, yes, is premised on
9 the assumption that there was some
10 water contained in the drum.

11 Q. And assuming that
12 assumption, it is in fact your
13 opinion within a reasonable degree of
14 scientific certainty?

15 A. Yes.

16 MS. FLAX: Why don't we
17 take a five-minute break.

18 (Thereupon, at 12:13 p.m. a
19 luncheon recess was taken until
20 1:14 p.m., at which time the
21 following proceedings were had:)

22 BY MS. FLAX:

23 Q. At the beginning of the
24 deposition, Mr. Vandeven, I asked you



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1 who Mark Hawley was and you said that
2 he was a hydrogeologist in your
3 office. What role did he play in the
4 preparation of Vandeven-1?

5 A. Mark assisted me in
6 reviewing some of the underlying
7 documents. He assisted me in
8 evaluating the -- in obtaining
9 documents related to the history of
10 the site, and assisted me in the
11 preparation of the expert report.

12 Q. What exactly did Mr. Hawley
13 do in connection with assisting you
14 in the preparation of the expert
15 report?

16 A. Well, I'm not sure I could
17 tell you exactly. But, for instance,
18 in Vandeven-1 there's a portion of
19 the expert report that provides a
20 chronological summary of activities
21 at the site.

22 I believe Mark helped me
23 put that together, going through the
24 underlying documents, understanding



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1 the chronology of the EPA response
2 actions at the site, and drafting
3 those sections of the report.

4 Q. Did you physically write
5 this report?

6 A. Large portions of it, yes.

7 Q. Did Mr. Hawley write any
8 portions of this report, other than
9 the response activity section that
10 you just testified to?

11 A. He may have written other
12 small parts of it. I couldn't say
13 exactly which parts he wrote, at this
14 point.

15 Q. What portion would you say
16 is your effort and what portion would
17 you say is Mr. Hawley's effort?

18 A. As far as the physical
19 writing of it?

20 Q. Well, the overall report.

21 A. Well, the overall report is
22 my report, they are my opinions, but
23 the actual writing of it I would say,
24 you know, maybe 25 percent Mark.



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1 Q. And would the same be true
2 with respect to Vandeven-5, which is
3 your rebuttal report, as to
4 Mr. Hawley's assistance in the
5 preparation of Vandeven-5?

6 A. It was probably less there,
7 since there was no real background
8 information to summarize.

9 This was probably more --
10 his effort here was probably more
11 related to reviewing the other expert
12 reports with me and us discussing
13 what we -- getting his input on what
14 he thought about those other expert
15 reports, too.

16 But the primary writing of
17 the rebuttal report was mine.

18 Q. Before the break we were
19 talking about various portions of the
20 last paragraph on Page 7 of Vandeven-
21 5.

22 And I believe that you
23 testified that with the assumptions
24 that are contained in those three



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DEPOSITION OF JAY VANDEVEN, VOLUME I, 2/13/07

1 sentences that we discussed, your
2 opinions are within a reasonable
3 degree of scientific certainty.
4 Correct?

5 A. That's correct.

6 Q. If the assumptions proved
7 untrue, would you have any basis to
8 make the statements that you make in
9 the last paragraph on Page 7 of
10 Vandeven-5, and if you want me to go
11 through each one again I will.

12 MR. HARRIS: Object to the
13 form.

14 MS. FLAX: Okay. Strike
15 that.

16 BY MS. FLAX:

17 Q. If the assumption that you
18 make in the third sentence of the
19 second paragraph on Page 7 that
20 starts "in response," if the
21 assumptions were unproven, would you
22 still make the opinion that materials
23 described as sludges and handled with
24 shovels may contain substantial



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